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8 Attorneys for Plaintiff/Counterclaim Defendant
9 SPARKNET HOLDINGS, INC. and
10 SPARKNET COMMUNICATIONS L.P.

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

13 SPARKNET HOLDINGS, INC., a Nevada
14 corporation, SPARKNET
15 COMMUNICATIONS, L.P., a Nevada
16 partnership,

17 Plaintiffs,

18 v.

19 ROBERT PERRY, an individual, KRIS
20 SWEETON, an individual, INDIE
21 RANCH MEDIA, INC., a Colorado
22 corporation, NETMIX BROADCASTING
23 NETWORK, INC., an unknown entity,
24 and JOHN DOES 1-5;

25 Defendants.

Case No.: CV 08-08510 GHK (PLAx)

**COUNTERCLAIM DEFENDANT
SPARKCOMM
COMMUNICATIONS, L.P.'S
ANSWER TO COUNTERCLAIM BY
ROBERT PERRY**

1 Counterclaim Defendant (“SparkComm”) (collectively “SparkComm”) hereby
2 submits its Answer and Affirmative Defenses to the Counterclaim filed by Robert
3 Perry (“Perry”).¹
4

5 **Jurisdiction and Venue**

6 1. SparkComm admits that the Court has jurisdiction over Plaintiff’s
7 complaint pursuant to 15 U.S.C. § 1121 but denies that the Court has jurisdiction over
8 Perry’s unrelated Counterclaim pursuant to that provision.

9 2. SparkComm denies that it has consented to the Court’s jurisdiction and to
10 this venue for purposes of Perry’s Counterclaim.
11

12 **Facts**

13 3. SparkComm admits that Perry named JACK FM after a fictitious person,
14 “Cadillac Jack” Garrett, a DJ who finally got his own radio station and, after years of
15 being told what he was to play on-air, created a station where the motto was “playing
16 what we want.” Except as expressly admitted, SparkComm denies the allegations of
17 Paragraph 3.

18 4. SparkComm admits that Perry applied for registration of the marks
19 “PLAYING WHAT WE WANT” (U.S. Reg. No. 2,884,476) and “JACK.FM” (U.S.
20 Serial No. 78/316/636 in October, 2003, based on first use dates of May 1, 2001.
21 SparkComm admits that Perry had also used the mark “JACK.” Except as expressly
22 admitted, SparkComm denies the allegations of Paragraph 4.

23 5. SparkComm admits that, on December 22, 2003, Perry and Bohn and
24 Associates Media, Inc. (“BohnCo”) entered into a Memorandum of Agreement
25 (“License Agreement”) the terms of which are set forth therein. Except as expressly
26 admitted, SparkComm denies the allegations of Paragraph 5.
27

28 ¹ The only cause of action (for conversion) against SparkNet Holdings, Inc.
 (“SparkHold”) was dismissed by the Court. Thus, no answer is required by that entity.

1 6. SparkComm admits that on or about June 7, 2005, BohnCo advised Perry
2 that it had assigned its rights in the License Agreement to SparkComm on June 6,
3 2005. Except as expressly admitted, SparkComm denies the allegations of Paragraph
4 6.

5 7. SparkComm admits that on or about June 16, 2005, Perry and Plaintiffs
6 entered into three agreements: (1) a “Trademark Assignment” between Perry and
7 SparkHold, (2) a “Memorandum of Agreement” between Perry and SparkHold, and (3)
8 a “Consulting Agreement” between Perry and SparkComm. Except as expressly
9 admitted, SparkComm denies the allegations of Paragraph 7.

10 8. SparkComm admits that the terms of the Trademark Assignment are set
11 forth therein. Except as expressly admitted, SparkComm denies the allegations of
12 Paragraph 8.

13 9. SparkComm admits that the terms of the Memorandum of Agreement are
14 set forth therein. Except as expressly admitted, SparkComm denies the allegations of
15 Paragraph 9.

16 10. SparkComm admits that, pursuant to the Consulting Agreement,
17 SparkComm retained the services of Perry for the purposes set forth in Section 1 of the
18 Consulting Agreement, which includes consulting services and that the terms of the
19 Consulting Agreement are set forth therein. Except as expressly admitted, SparkComm
20 denies the allegations of Paragraph 10.

21 11. SparkComm admits that the Consulting Agreement contains a Minimum
22 Compensation Provision, the terms of which are set forth in the Consulting Agreement.
23 Except as expressly admitted, SparkComm denies the allegations of Paragraph 11.

24 12. SparkComm admits that the terms for the termination of the Consulting
25 Agreement are contained therein. Except as expressly admitted, SparkComm denies
26 the allegations of Paragraph 12.

1 13. SparkComm admits that a lawsuit was filed against Bonneville
2 International Corp. for trademark infringement. Except as expressly admitted,
3 SparkComm denies the allegations of Paragraph 13.

4 14. SparkComm admits that Newman & Newman represented SparkComm in
5 this matter against Perry until such time as the Court ordered disqualification. Except
6 as expressly admitted, SparkComm denies the allegations of Paragraph 14.

7
8 **FIRST CAUSE OF ACTION**

9 **BREACH OF CONTRACT**

10 **(Against Counterdefendant SparkNet Communications, L.P.)**

11 15. SparkComm's responses to paragraphs 1 through 14 are incorporated by
12 reference as if set forth in full.

13 16. SparkComm admits that SparkComm engaged Perry pursuant to a
14 Consulting Agreement, the terms of which are set forth therein. Except as expressly
15 admitted, SparkComm denies the allegations of Paragraph 16.

16 17. SparkComm admits that the Consulting Agreement contains a Minimum
17 Compensation Provision, the terms of which are set forth in the Consulting Agreement.
18 Except as expressly admitted, SparkComm denies the allegations of Paragraph 17.

19 18. SparkComm denies the allegations of Paragraph 18.

20 19. SparkComm denies the allegations of Paragraph 19.

21 20. SparkComm denies the allegations of Paragraph 20.

22
23 **SECOND CAUSE OF ACTION**

24 **ACCOUNTING**

25 **(Against Counterdefendant SparkNet Communications, L.P.)**

26 21. SparkComm's responses to paragraphs 1 through 14 and 16 through 20
27 are incorporated by reference as if set forth in full.

28 22. SparkComm denies the allegations of Paragraph 22.

1 23. SparkComm denies the allegations of Paragraph 23.

2
3 **Affirmative Defenses**

4 By alleging the Affirmative Defenses set forth below, SparkComm does not
5 agree or concede that it bears the burden of proof or the burden of persuasion on any of
6 those issues, whether in whole or in part. SparkComm hereby assert the following
7 Affirmative Defenses to Perry's Counterclaim as follows:

8
9 **First Affirmative Defense**

10 1. Perry's Counterclaim fails to state a claim upon which relief can be
11 granted.

12
13 **Second Affirmative Defense**

14 2. Perry's claims or recovery thereon are barred, in whole or in part, by the
15 equitable doctrine of unclean hands.

16
17 **Third Affirmative Defense**

18 3. Perry's claims are barred, in whole or in part, by his failure to mitigate his
19 alleged damages.

20
21 **Fourth Affirmative Defense**

22 4. Perry's claims are barred by the doctrines of laches, estoppel and waiver.

23
24 **Fifth Affirmative Defense**

25 5. SparkComm's obligations under the consulting agreement were/are
26 excused as a result of Perry's non-performance.

27 //

28 //

1 Sixth Affirmative Defense

2 6. SparkComm's obligations under the consulting agreement were/are
3 excused as a result of Perry's breach and failure to cure.

4
5 Seventh Affirmative Defense

6 7. SparkComm's obligations under the consulting agreement have been fully
7 performed and/or are excused as evidenced by the parties' course of dealing.

8
9 Eighth Affirmative Defense

10 8. This Court is an improper venue for the prosecution of Perry's
11 Counterclaim.

12
13 Additional Affirmative Defenses

14 SparkComm has not completed its investigation and discovery regarding the
15 facts and claims asserted by Perry. Accordingly, SparkComm reserves the right to
16 assert such additional affirmative defenses as necessary based on such ongoing
17 investigation and discovery.

18 //

19 //

DEMAND FOR JURY TRIAL

SparkComm hereby demands trial by jury on all issues so triable.

DATED: August 24, 2009

WILLENKEN WILSON LOH & LIEB LLP

By: /s/ William A. Delgado.

William A. Delgado

Attorneys for Counterclaim Defendant

SparkNet Communications, L.P.

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the Electronic Service List for this Case.

Respectfully submitted this 24th day of August 2009.

DATED: August 24, 2009

WILLENKEN WILSON LOH & LIEB LLP

By: /s William A. Delgado
William A. Delgado
Attorneys for Counterclaim Defendant
SparkNet Communications, L.P.